

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(104+210)

CM No.19833 of 2022 in/and
CWP No.1125 of 2016 (O&M)
Date of Decision : 13.12.2022

Rajender Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Yesh Paul Malik, Advocate
for the petitioners.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Harsimran Singh Sethi, J. (Oral)

CM No.19833 of 2022

Application is allowed.

Documents are taken on record.

CWP No.1125 of 2016

In the present petition, the grievance of the petitioner is that

the petitioner was initially appointed on the post of School Lecturer in

January, 1997 after his name was recommended by the Employment Exchange and after undergoing due selection process envisaged for appointment to the said post.

The petitioner was only allowed on the said post to work on the said post for a period of three months and thereafter he was relieved from service though similarly situated employees were allowed to continue. Along with the petitioner, there were other School Lecturers, who were also relieved from service in the similar fashion. The action of relieving the teachers was challenged by some of the aggrieved contractual teachers before this Court and the Division Bench of this Court by passing order in CWP No.12586 of 1999, titled as **Rajbir Singh Vs. State of Haryana**, decided on 03.07.2022 held that the relieving of the contractual teachers was not in accordance with law and directed that they be reinstated in service on certain conditions. After the decision in **Rajbir Singh's case(supra)**, number of teachers who were similarly situated approached this Court and they were also granted the similar benefit of reinstatement.

Thereafter, a question arose whether the reinstated employees, who have been allowed to join back are entitled for continuity of service or not. This Court held that though no monetary benefit will be

granted to the teachers but they will be allowed to join back the service

and will be allowed continuity of service. The petitioner, who was similarly situated also approached this Court seeking the benefit of reinstatement in service and the said benefit was granted to him by the respondents but, the petitioner was not granted the benefit of continuity of service for which, the petitioner filed CWP No.2442 of 2007, which was disposed of by this Court with a direction to respondents to decide the legal notice submitted by the petitioner for the grant of continuity of service vide order dated 20.08.2007. The said request of the petitioner was declined by the respondents, which order is under challenge in the present petition.

Learned counsel for the petitioner argues that except petitioner, all the other employees who were relieved in the year 1997 or, thereafter, were allowed to rejoin the service and have been granted the benefit of continuity of service either by the competent court of law or by the respondents themselves, hence, the action of the respondents for not granting the similar benefit to the petitioner is totally arbitrary and illegal. Hence, the respondents are liable to be directed to grant the petitioner the same benefit as being extended to the similarly situated employees, namely, Umesh Chander and Amin Khan as well as one Ashok Kumar.

After notice of motion, the respondents have filed reply

wherein, the respondents have stated that though, Umesh Chander, Amin

Khan and Ashok Kumar have been granted the benefit of continuity of service but the the petitioner was not similarly situated with them, as petitioner was given fresh appointment whereas the candidates whose cases are being relied upon by the petitioner to claim the benefit, were reinstated in service.

The other objection taken by the respondents is that the claim of the petitioner was declined while passing speaking order in the year 2007 whereas the same has only been challenged after a period of nine months, hence prayer of the petitioner needs to be declined on the ground of delay and laches itself.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

Though, the petitioner should have been vigilant enough to challenge the order declining the relief of continuity of service immediately but, the delay is not inordinate as the same was challenged when the respondents themselves started granting the benefit to the similarly situated employees. It is not denied by the respondents that the benefit of continuity of service has been granted to Umesh Chander as well as to Amin Khan but the only difference being projected is that though the petitioner was also relieved from service along with these two

whereas, the petitioner was granted fresh appointment. The said objection has been raised by the respondents without even going through the order passed in favour of Umesh Chander and Amin Khan. The orders passed in favour of Umesh Chander and Amin Khan have been placed on record by the petitioner as Annexures A-1 and A-2 with CM No.19833 of 2022. A bare perusal of the said orders would show that in the case of Umesh Chander as well as Amin Khan also, the same order, as passed in favour of the petitioner, has been passed offering them fresh appointment as Lecturer with immediate effect.

Learned counsel for the respondents very fairly conceded that though the said objection has been taken by the respondents to deny relief to the petitioner but the said objection is factually incorrect keeping in view the order passed in favour of the similarly situated employees, namely, Umesh Chand and Amin Khan.

Once the benefit of continuity of service has been extended by the respondents themselves in favour of Umesh Chander and Amin Khan, who are similarly situated as the petitioner, the petitioner cannot be denied the same benefit so as to deny the parity and to avoid discrimination.

The other objection which has been taken by the respondents

is that the petitioner is challenging the order passed in 2007 rejecting his

claim for the grant of continuity of service after a period of nine months, therefore, the petitioner be estopped from challenging the said order by way of present writ petition.

The petitioner should have been vigilant enough to challenge the order immediately but in the facts and circumstances of the case, the challenging of said order in the present writ petition cannot be termed as challenged after inordinate delay for the reason that in the year 2016 itself when the writ petition was filed, the respondents had granted the similar benefit to Umesh Chander and Amin Khan on their own. That being so, granting the benefit to similarly situated employees will give fresh right to the petitioner to claim the said benefit and the ground of delay and laches being contended by the respondents cannot be treated as valid ground so as to deny the benefit to the petitioner.

Keeping in view the above, the present petition is allowed. Order dated 20.08.2007 is set aside. The petitioner is also held entitled for continuity of service and other benefits, which have been allowed to the similarly situated employees, namely, Umesh Chander and Amin Khan.

As the petitioner has challenged the order of 2007 in the year 2016, though the petitioner will be entitled for fixation of his salary notionally but the actual benefit will only be granted to the petitioner from the date of filing of the present petition i.e. January, 2016 onwards only.

Let the present order be complied within a period of two months from the

date of receipt of copy of this order.

December 13, 2022
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*